

Remarks/Arguments

Claims 6-10 and 23-24 remain pending in this application for consideration.

Applicants note with appreciation the Examiner's indication that the pending claims satisfy the requirements of 35 U.S.C. § 101.

The Examiner has rejected claims 6-10, 23, and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. It is unclear from the Office Action upon what basis this rejection is made. The Examiner has indicated that the rejection of claims 23-24 for the use of the word "system" has been withdrawn. However, the Examiner indicated that the AdvisorDesigns Variable Annuity Prospectus submitted by the Applicants in response to the § 1.105 requirement do not include a definition for the terms "dividend" and "fee" as used in the claims, and requested clarification.

Applicants' counsel is unaware of any requirement that Applicants' commercial literature (such as the referenced prospectus) include the same terms as used in its patent claims. Furthermore, Applicants' commercial literature should in no way limit the scope of the patent claims. The invention, as claimed, is fully and completely described in the patent application and the meaning of "dividend" and "fee" as used in the patent claims is clear from reading the patent application. Whether or not those same terms are used in Applicants' commercial literature is irrelevant and does not form an appropriate basis for rejection under 35 U.S.C. § 112, second paragraph.

Moreover, in the example of the dividend methodology in the AdvisorDesigns Statement of Additional Information ("SAI") and submitted by Applicant as Attachment I to its Amendment and Response to Office Action dated October 18, 2004, the term "Gross Dividend

"Per Unit" is used in the box at the top of page four (4). The text that precedes the example also uses the term "dividend." It is respectfully submitted that the "Gross Dividend Per Unit" referenced in the SAI is an example of a "dividend" as that term is used in the present application. Similarly, in the example of the dividend methodology in the SAI, the "Excess Charge" comprises the mortality and expense risk charge over and above the minimum mortality and expense risk charge. This "Excess Charge" is an example of a "fee" as that term is used in the present application. In the example in the SAI, an investor with no optional riders was assumed. The only affect of illustrating the use of riders would have been to increase the "Excess Charge" or "fee." Thus, while the Applicants are not required to use terms utilized in the claims in its commercial literature, the SAI previously submitted does include examples of a method falling within the scope of the claims that include some form of a "dividend" and "fee" as those terms are used in the patent claims.

It is respectfully submitted that the rejection under 35 U.S.C. § 112, second paragraph, is without merit and should be withdrawn.

The Examiner has requested under 37 C.F.R. § 1.105 that Applicants provide prior art methods of administering annual fees and annual asset charges of no-load annuity products. Responsive to that request, the following information with respect to known prior art methods of administering annual fees and annual asset charges of no-load annuity products is enclosed:

1. T. Rowe Price No-Load Variable Annuity Prospectus dated May 1, 2005 (Exhibit 1). See the Charges and Deductions section on page 28. The daily charge described in the Mortality and Risk Charge subsection is the standard industry method for deducting charges for no-load variable annuity products.

2. T. Rowe Price No-Load Variable Annuity Statement of Additional Information dated May 1, 2005 (Exhibit 2).

In view of the foregoing remarks, it is respectfully submitted that the claims are now in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments which need be addressed in order to obtain allowance, please contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: 

Penny R. Slicer, Reg. No. 34,017

STINSON MORRISON HECKER LLP

1201 Walnut Street, Suite 2900

Kansas City, MO 64106-2150

Telephone: (816) 842-8600

Facsimile: (816) 691-3495